THE HONOURABLE SRI JUSTICE GOPALAKRISHNA TAMADA

W.P. No.32969 of 1997

ORDER:

This writ petition has been filed seeking writ of *Mandamus* declaring the proceedings in SR. No.26/994/96/B3 dated 17-07-1997 passed by the 1st respondent, pending the civil suits in O.S. No.772/96, 119/97 and 833/97 regarding the title disputes in respect of the property in T.S. No.1187 Block No.53, Waltair Ward, VSP on the file of the Sub Court, VSP., as illegal and arbitrary.

The case of the petitioners is that the 1st petitioner's sangham church registered under the provisions of the Societies Registration Act, 1860 in S.No.336/1996 on 25-03-1996. The said Sangham church was established in the year 1970 by the inmates of Rock-dale Bunglow by constructing thatched shed and offering prayers and worshipping the God. The Sangham church has been in possession and enjoyment of the disputed site ever since from 1970 without any interruption from any person. Further it is the case of the petitioners that in the year 1996 respondents 2 and 3 have started claiming that the 2nd respondent has executed agreement of sale in favour of the 3rd respondent. Certain suits have been filed claiming title in respect of the property in dispute. While pending the said suits, respondents 2 and 3 applied for permission of the 1st respondent to sell the property and the 1st respondent issued a notice dated 17-07-1997 under Section 26 of the Urban Land (C&R) Act, 1976 to the 1st petitioner to attend the enquiry on 29-07-1997. Accordingly, petitioner's sangham church

attended the enquiry and filed affidavit narrating the facts including the pendency of civil suits with regard to title dispute. Since the 1st respondent insisted the petitioner's sangham church to produce title deeds, they filed a memo requesting the 1st respondent to send for the documents filed in O.S.No.772 of 1996. But without considering the memo, the 1st respondent has been declaring that irrespective of the title dispute pending in civil Court having jurisdiction, he is going to decide the issue himself.

While denying the averments mentioned in the affidavit, filed in support of the petition, a detailed counter has been filed by the 1st respondent admitting that notice dated 17-07-1997 was issued to the petitioner's sangham church to attend enquiry on 29-07-1997 with all relevant records in support of their claim. On 29-07-1997 the Secretary of the said sangham church was present and sought time for filing material papers for which, the case was adjourned to 20-09-1997. Later on, the writ petitioners filed a copy of I.A. No.736 of 1996 in O.S. No.772 of 1996 dated 12-03-1997 of the Principal Sub ordinate Judge, Visakhapatnam. At this stage, the petitioners approached this Court.

Heard the learned counsel.

The main grievance of the petitioners is that without considering the memo filed by them, the 1st respondent has been declaring that irrespective of the title dispute pending in civil Court having jurisdiction, he is going to decide the issue himself.

As could be seen from the material on record, it is evident that notice dated 17-07-1997 has been issued to the petitioner's sangham

church informing to attend enquiry on 29-07-1997. Accordingly, the sangham church attended and offered its explanation. Before passing any order considering the said explanation, the petitioners, on apprehension, approached this Court by filing the present writ petition, which in my considered view is premature. The petitioners ought to have waited till the concerned authority i.e. 1st respondent passed orders on the explanation offered by them. Without any orders being passed by the 1st respondent, adverse to the interest of the petitioners, they approached this Court by way of this writ petition, which in my considered view is definitely premature. Accordingly, I see no merits in this writ petition and is liable to be dismissed. Accordingly, the Writ Petition is dismissed. No order as to costs.

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JUSTICE GOPALAKRISHNA TAMADA

Date: 12-02-2007
LSK